

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 15-11

IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV,

— vs. —

**MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

INFORMAL DOCKET NO.: 1953(I)

KAIRAT NURGAZINOV,

— vs. —

**MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

**REPLY TO COMPLAINANTS' MOTION TO STRIKE, PRECLUDE, AND/OR
COMPEL COMPLIANCE WITH THE PRESIDING OFFICER'S ORDERS**

Complainants, by their Counsel, Marcus A. Nussbaum, Esq., hereby file this Reply to Complainants' Motion to Strike, Preclude, and/or Compel Respondents to comply with the Presiding Officer's Orders to file Shipping Documents dated April 27, 2016 (the subject "Orders"), and for such other and further relief as Judge Guthridge may deem appropriate.

"EXTRAORDINARY CIRCUMSTANCES" WARRANT COMPLAINANTS' REPLY

Pursuant to 46 C.F.R. § 502.71, as adopted by Rule 71 of the Commission's Rules of Practice and Procedure ("CRPP"), a moving party may file a Reply to a non-dispositive motion

“...upon a showing of extraordinary circumstances.” It is respectfully submitted that as set forth below extraordinary circumstances exist herein which warrant the interposing of Complainants’ instant Reply to their motion now pending before the Presiding Officer.

NATURE OF THE CASE

As the Presiding Officer is aware, this action arises out of numerous violations of the Shipping Act of 1984, 46 U.S.C. §40101 et seq. by Respondents, most particularly, Respondent, Michael Hitrinov (“Hitrinov”) in that Respondents converted, stole, and unlawfully released certain automobiles owned by Complainants which had been shipped at Complainants’ expense from the United States to Kotka, Finland. In lieu of properly releasing said automobiles to Complainants’ as purchasers, lawful holders of title, shippers, and lawful recipients of same, said automobiles were instead *unlawfully* released by Respondents to third-parties at a location owned by Respondents or within their control. Additionally, Complainants claims include compensation for maritime liens having been *unlawfully* and improperly levied and imposed by Respondents against Complainants’ automobiles.

RECENT PROCEDURAL HISTORY

Following Complainants having filed their instant motion for the relief requested herein on June 7, 2016, Respondents filed a document entitled “Respondents’ Response to Complainants’ **Motion to Dismiss**” on June 14, 2016 (emphasis added).

On June 15, 2016 your affirmant received from one Ms. Juanita Hutchins (“Ms. Hutchins”), upon information and belief, Secretary to the Presiding Officer, an email inquiring as to *why* Respondents had filed a Response to a Motion to Dismiss having no record of Complainants having filed such a motion, a copy of which is annexed hereto as **Appendix “A”**. In purported response to such reasonable inquiry, Respondents, in an answering email at first attempted to deny

having filed such a Response claiming, a “typographical error” that was only contained in a “cover email” and not in the body of said Response a copy of which is annexed hereto as **Appendix “B”**.

In a subsequent email of the same date, a copy of which is annexed hereto as **Appendix “C”**, Respondents then ‘shifted’ their position from that of a “typographical error” in the “cover email” to a “clerical error” allegedly committed by a secretary which was purportedly cured in the “Conclusion” of said Response.

Ultimately, the foregoing was exposed as reaching far beyond *either* a “typographical error” *or* a “clerical error”, but as extending to Respondents having Certified that said Response was to a “Motion to Dismiss” *which was never made*, thus constituting a fatal procedural defect which warrants that the Presiding Officer *reject* said Response.

Thereafter, on June 21, 2016 Respondents then further compounded the egregious nature of their having interposed a Response containing the fatal procedural defect set forth above by having filed with the Presiding Officer, “Respondents’ Consolidated Response to Complainants Multiple Email Motions”. Aside from the convoluted nature of the title of said document, Respondents filed an apparent ‘supplemental’ Response with the Presiding Officer as an attempted rejoinder to the email exchange described above, but absent having obtained leave of the Presiding Officer to do so. It is respectfully submitted that the latter constitutes precisely the type of “extraordinary circumstances” contemplated by 46 C.F.R. § 502.71 which permit and allow for the filing of Complainants’ instant Reply.

With regard to an argument that can only be categorized as “bizarre”, Respondents have gone off on a “sideshow” with regard to alleged multiple email motions purportedly made by Complainants herein. As the Presiding Officer is well aware, *no* such email motions were in fact

ever made, but rather exist *only* in the delusional fantasies of the true author of said Response, and neither merit nor require *any* further comment hereon.

In the alternative, and should the Presiding Officer nonetheless deign to accept Respondents' fatally defective Response, it is respectfully submitted that as set forth below, "extraordinary circumstances" warrant and permit for the interposing of Complainants' instant Reply.

BRIEF STATEMENT

It is respectfully submitted that the so-called "Respondents' Response to Complainants' Motion to Dismiss" is in fact, no "response" at all, in that oddly, and in lieu of actually responding to Complainants' motion, Respondents have inexplicably seen fit to "argue" almost exclusively, issues purportedly relating to discovery allegedly owed *by* Complainants *to* Respondents in the absence of having interposed either their own motion, or a cross motion.

Aside from the foregoing, the remainder of said "response" consists of rude, smarmy, condescending, and unlawful pontification of Respondents' counsel, by Eric Jeffrey, Esq. which despite the level of its snide invective, *abjectly fails* to constitute any "response" *whatsoever*, let alone sufficient to warrant denial of Complainants' instant motion, which should now be summarily granted in its entirety.

ARGUMENT

RESPONDENTS FAILURE TO COMPLY WITH THE PRESIDING OFFICER'S ORDERS OF APRIL 27, 2016

Standard of Review

46 C.F.R. 515.33 reads, in relevant part, as follows:

"Each licensed or registered NVOCC...*shall* maintain in an orderly and systematic manner, and keep current and correct, ***all records and books of account in connection with its OTI business.***" See Id. (emphasis added).

Most particularly, and within the “records and books” that Respondents *must* keep in connection with their OTI (Ocean Transportation Intermediary) business, are the following:

“(a) *General financial data.* A current running account of all receipts and disbursements, accounts receivable and payable, and daily cash balances, supported by appropriate books of account, bank deposit slips, canceled checks, and monthly reconciliation of bank statements.

(b) *Types of services by shipment.* A separate file shall be maintained for each shipment. Each file shall include a copy of each document prepared, processed, or obtained by the licensee, including each invoice for any service arranged by the licensee and performed by others, with respect to such shipment.

(c) *Receipts and disbursements by shipment.* A record of all sums received and/or disbursed by the licensee for services rendered and out-of-pocket expenses advanced in connection with each shipment, including specific dates and amounts.

(d) *Special contracts.* A true copy, or if oral, a true and complete memorandum, of every special arrangement or contract between a licensed freight forwarder and a principal, or modification or cancellation thereof.”

Indeed, the Presiding Officer’s Orders to File Shipping Documents of April 27, 2016 directed Respondents to produce *the very documents which they are required to keep* pursuant to statute as a licensed NVOCC. Pursuant to said Orders, documents that Respondents were required to produce included the following: quotes of freight rates for transportation; shipping agreements; booking confirmations; bills of lading, dock receipts; invoices, payments for transportation; validated Certificates of Title; export and import declarations; notices of arrival; *and any other documents relating to the shipment of the vehicles* (emphasis added).

As abundantly set forth in detail in Complainants’ instant motion, Respondents have abjectly failed to comply with the Presiding Officer’s Orders.

The Subject Complaint

The Complaint at bar alleges, *inter alia*, the following:

“At all times relevant to the instant lawsuit, EUL and Hitrinov: (a) ordered cargo to

port; (b) prepared and/or processed export declarations; (c) booked, arranged for, and confirmed cargo space; (d) prepared and processing delivery orders and/or dock receipts; (e) processed ocean bills of lading; (f) arranged for warehouse storage; (g) cleared shipments in accordance with United States Government export regulations; (h) handled freight or other monies advanced by shippers, and/or remitted or advanced freight or other monies or credit in connection with the dispatching of shipments; (i) coordinated the movement of shipments from origin to vessel; and (j) give expert advice to exporters concerning problems germane to the cargoes' dispatch.”

In purported response to the Presiding Officer’s Orders, Respondents lamely proffered approximately fifty (50) pages of documents consisting largely of dock receipts, *unvalidated* Certificates of Title, random email correspondence, ocean liner bills of lading, and Shipper’s Export Declarations.

Conspicuously *absent* from Respondents’ lame proffer, are *any* of the following: freight rates for transportation of the subject vehicles; shipping agreements relating to transport of the subject vehicles; booking confirmations regarding space on ocean liners that transported the subject vehicles; import declarations and other customs documentation regarding the subject vehicles; Notices of Arrival confirming arrival of the subject vehicles at the port of destination; validated Certificates of Title for the subject vehicles; and any other documents relating to the shipment of the subject vehicles.

Respondents’ Failure to Comply is Willful, Contumacious, and Intentional

As abundantly demonstrated in Complainants’ original motion and as set forth above, Respondents have failed to produce numerous documents including “any other documents relating to the shipment of the subject vehicles” as Ordered by the Presiding Officer’s Orders of April 27, 2016. Such failure is only rendered more egregious in that it is and remains undisputed that Respondents had *complete control* over the export process from the moment that the subject automobiles were delivered to Respondents’ warehouse in Elizabeth, New Jersey until they were unlawfully released by Respondents to third-parties who were *not* the lawful owners of said

vehicles in Kotka, Finland. Additionally, it is and remains undisputed that it was Respondents who were responsible for placing the subject automobiles into containers, and delivering said automobiles for ocean liner freight transport.

Implicit within Respondents' receipt, control, shipment, and ultimate unlawful release is the fact that absent either willful destruction of said documents, or the secreting of same, Respondents were and are in possession of *all* documents necessarily created within the above referenced process which *were and are* discoverable by Complainants pursuant to the Presiding Officer's Orders of April 27, 2016 of which Respondents continue to be in flagrant disregard.

Respondents' Failure to Meet and Confer

On May 27, 2016, in a good faith attempt to resolve outstanding discovery issues prior to resorting to intervention of the Presiding Officer, Complainants requested by email to "meet and confer" with Respondents' counsel to cure the many deficiencies set forth above, and to schedule dates certain for depositions. A copy of said email is annexed hereto as **Appendix "D"**. In lieu of following the CRPP, Respondents instead made vague reference to having forwarded Complainants' "request" to Mr. Hitrinov, and equally nebulous reference to "get[ting] back to [your affirmant] in due course". Needless to say, Respondents' 'efforts' do not remotely approach or constitute any 'good faith' to attempt to 'meet and confer', but rather evince a demonstrated desire to continue to delay, frustrate, and obstruct, which under the circumstances can only reasonably be construed by the Presiding Officer to constitute willful, malicious, and intentional non-compliance by Respondents with the subject Orders.

Your affirmant will not dignify by response, the unlawyerly "arguments" (if they can be fairly be characterized as such) of an obviously and very junior associate at the office of Respondents' counsel, other than to state that youthful inexperience is no excuse for either gross

incompetence or unwarranted personal attack upon an adversary, which as having been literally “signed off” on by Respondents’ counsel of record, Mr. Jeffrey, cannot now otherwise be excused.

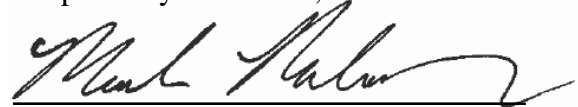
CONCLUSION

It is respectfully submitted that based upon the foregoing, together with that set forth in their original motion, Complainants have demonstrated *prima facie* entitlement to the relief sought therein, to wit: the striking of the Answer of the Respondents by reason of their willful, contumacious, and intentional noncompliance with the Presiding Officer’s Orders of April 27, 2016, and/or preclusion from introducing documents or testimony into evidence at trial of this matter and otherwise prohibit Respondents from supporting their defenses herein; or in the alternative, compelling Respondents to forthwith comply with the Presiding Officer’s Orders, inclusive of setting dates certain for the holding of depositions in this matter.

WHEREFORE, it is respectfully requested that the Presiding Officer now grant Complainants’ instant motion in its entirety, together with such other and further relief as the Presiding Officer may deem just and proper under the circumstances.

Dated: June 21, 2016
Brooklyn, New York

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Marcus A. Nussbaum", written over a horizontal line.

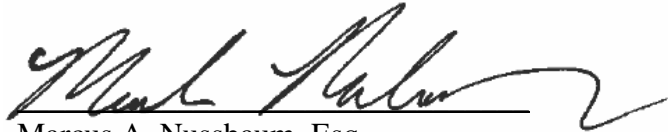
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the **REPLY TO COMPLAINANTS' MOTION TO STRIKE, PRECLUDE, AND/OR COMPEL COMPLIANCE WITH THE PRESIDING OFFICER'S ORDERS** and **APPENDIX** upon Respondents' Counsel at the following address:

Nixon Peabody LLP
Attn: Eric C. Jeffrey, Esq.
799 9th Street NW, Suite 500
Washington, DC 20001-4501

by first class mail, postage prepaid, and by email (ejeffrey@nixonpeabody.com).

A handwritten signature in black ink, appearing to read "Marcus A. Nussbaum", written over a horizontal line.

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Dated: June 21, 2016 in Brooklyn, New York.